

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

AMERICAN CENTRAL INSURANCE COMPANY

PLAINTIFF

VS.

CIVIL ACTION NO. 5:05-cv-143 (DCB) (JCS)

MASSEY LAND & TIMBER, LLC;  
DAVID BREWER, INC.;  
BREWER CONSTRUCTION, INC.;  
AND PEAR ORCHARD VICKSBURG, LLC

DEFENDANTS

ORDER

This cause is before the Court on defendant Brewer Construction, Inc.'s motion to set aside entry of default (**docket entry 24**). Having carefully considered the motion, which is unopposed, and being fully advised in the premises, the Court finds as follows:

Defendant Brewer Construction, Inc., was served with process on August 31, 2005. On October 21, 2005, the plaintiff filed a motion for entry of default, and default was entered on October 26, 2005. On October 21, 2005, the plaintiff also filed a motion for default judgment, and an order granting default judgment against Brewer Construction, Inc., was entered on December 14, 2005.

In its motion to set aside the clerk's entry of default, filed January 18, 2006, Brewer Construction, Inc., asserts that "[t]o date, there has been no Order of Default Judgment entered against this [defendant]." (Motion, ¶ II). Clearly, the defendant failed to take note of the order granting default judgment against it on December 14, 2005. Because default judgment has been taken against

this defendant, and the defendant has not moved to set aside the default judgment, the present motion is not well taken and shall be denied without prejudice. Accordingly,

IT IS HEREBY ORDERED that defendant Brewer Construction, Inc.'s motion to set aside clerk's entry of default **(docket entry 24)** is DENIED without prejudice.

SO ORDERED, this the 28<sup>th</sup> day of February, 2006.

S/DAVID BRAMLETTE  
UNITED STATES DISTRICT JUDGE